

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts


The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §26.2, Definitions, and new §26.36, Projects of Another Governmental Entity, relating to the planning, design, construction, maintenance, repair, or operation of a transportation project by a regional mobility authority, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble, and adopted amendments and new section, attached to this minute order as Exhibits A-C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §26.2 and new §26.36 are adopted and are authorized for filing with the Office of the Secretary of State.

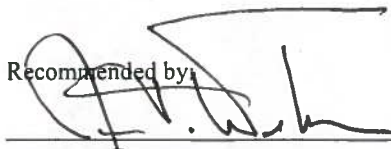
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

James W. Koch, Jr., P.E.

Director, Transportation Planning and Programming

Recommended by:


Executive Director

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Minute
Number

Date
Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §26.2 and new §26.36, concerning Regional Mobility Authorities. The amendments to §26.2 and new §26.36 are adopted without changes to the proposed text as published in the August 15, 2014 issue of the *Texas Register* (39 TexReg 6199) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Senate Bill 1489, 83rd Legislature, Regular Session, 2013, expanded the definition of a transportation project a regional mobility authority (RMA) is authorized to acquire, plan, design, construct, maintain, repair, or operate, and authorized an RMA to enter into an agreement under which the RMA may acquire, plan, design, construct, maintain, repair, or operate a transportation project on behalf of another governmental entity in this state.

Under Transportation Code, §370.033(f), except as for a transportation project described in Transportation Code, §370.033(f)(1) and (2), the department must approve an RMA's acquisition, planning, design, construction, maintenance, repair, or operation of a transportation project on behalf of another governmental entity. The amendments and new section implement the changes in the definition of transportation

1 project, and prescribe the procedures by which the commission
2 will consider approval of a transportation project.

3
4 The amendments to §26.2 amend the definition of a transportation
5 project an RMA is authorized to acquire, plan, design,
6 construct, maintain, repair, or operate.

7
8 In order to ensure the commission has the information necessary
9 to make an informed decision on whether to approve an RMA's
10 acquisition, planning, design, construction, maintenance,
11 repair, or operation of a transportation project on behalf of
12 another governmental entity, new §26.36 requires an RMA to
13 submit a request to the department's executive director.

14
15 The request must include an overview of the transportation
16 project for which the request is made, including total costs and
17 a description of the work to be performed by the RMA, a
18 description of the need for the project and the benefits
19 anticipated to result from completion of the project, a proposed
20 project funding plan, anticipated department participation in
21 the project, written approval of the project by the board of the
22 RMA and the governing body of the governmental entity, a
23 description of local public support for the project and any
24 local public opposition, a preliminary project development and
25 implementation schedule, a description of the RMA's experience

1 in developing comparable transportation projects, information
2 concerning how the project will be consistent with applicable
3 transportation plans, a preliminary identification of known
4 environmental issues, and a binding commitment to fully consider
5 the environmental consequences of the proposed project and
6 comply with applicable environmental laws and requirements.

7
8 New §26.36 provides that the commission may approve a request if
9 the RMA commits to comply with all applicable federal, state,
10 and, if applicable, department requirements. In determining
11 whether to approve a request, the commission will consider the
12 ability of the RMA to complete the work to be performed by the
13 RMA, the need for the project and whether the project is ready
14 for development, the anticipated benefit of the project, and
15 evidence of local support.

16
17 New §26.36 provides that the commission may approve a request if
18 it finds that the project will be consistent with applicable
19 statewide and metropolitan transportation plans, the RMA's
20 participation in the project will facilitate the ability of the
21 governmental entity to complete the project and achieve the
22 benefits anticipated to be derived from the project, the project
23 will neither duplicate nor conflict with the operations of
24 the department, the project is supported by the RMA, the
25 governmental entity, the metropolitan planning organization

(MPO) with jurisdiction over the project, and each other entity affected by the project, and the project is in the best interest of the region.

The information submitted with a request, and the criteria considered by the commission in determining whether to approve a request, and the findings that must be made by the commission in approving a request, are intended to enable the commission to conclude that the transportation project is a needed project, and will be completed, and the benefits anticipated from project completion will be achieved, in a timely manner.

COMMENTS

No comments on the proposed amendments and new section were received.

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §370.038, which requires the Texas Transportation Commission to adopt rules that govern commission approvals required by Transportation Code, Chapter 370.

- 1 CROSS REFERENCE TO STATUTE
- 2 Transportation Code, Chapter 370.

SUBCHAPTER A. GENERAL PROVISIONS

§26.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AASHTO--The American Association of State Highway and Transportation Officials.

(2) Board--The board of directors of a regional mobility authority.

(3) Commission--The Texas Transportation Commission.

(4) County--Includes the cities of El Paso, Laredo, Brownsville, McAllen, and Port Aransas.

(5) Director--A director of a board.

(6) Department--The Texas Department of Transportation.

(7) Environmental Permits, Issues, and Commitments (EPIC)--Any permit, issue, coordination, commitment, or mitigation obtained to satisfy social, economic, or environmental impacts of a transportation project, including, but not limited to, sole source aquifer coordination, wetland permits, stormwater permits, traffic noise abatement, threatened or endangered species coordination, archeological permits, and any mitigation or other commitment associated with any of those issues.

(8) Executive director--The executive director of the

1 department or the executive director's designee not below
2 district engineer, division director, or office director.

3 (9) Fiscal year--An accounting period of 12 months that
4 is consistent, to the extent feasible, with the fiscal year of
5 an RMA's member counties.

6 (10) Governmental entity--A municipality, county, the
7 department, or other public entity authorized to construct,
8 maintain, and operate a transportation project within the region
9 of a regional mobility authority.

10 (11) Metropolitan planning organization--An organization
11 designated to carry out the transportation planning process in
12 prescribed urbanized areas as required by 23 U.S.C. §134.

13 (12) Nonattainment area--An area designated by the U.S.
14 Environmental Protection Agency as not meeting the air quality
15 standards outlined in the Clean Air Act.

16 (13) Petitioner--The county or counties petitioning for
17 the creation of a regional mobility authority.

18 (14) Public utility facility--Means:

19 (A) a water, wastewater, natural gas, or petroleum
20 pipeline or associated equipment;

21 (B) an electric transmission or distribution line or
22 associated equipment; or

23 (C) telecommunications information services, or cable

1 television infrastructure or associated equipment, including
2 fiber optic cable, conduit, and wireless communications
3 facilities.

4 (15) RMA--A regional mobility authority.

5 (16) Revenue--Fares, fees, rents, tolls, and other money
6 received by an authority from the ownership or operation of a
7 transportation project.

8 (17) State Implementation Plan--The plan prepared by the
9 Texas Commission on Environmental Quality as required by 42 USC
10 §7410 to attain and maintain air quality standards.

11 (18) Surplus revenue--Revenue that exceeds:

12 (A) the regional mobility authority's debt service
13 requirements for a transportation project, including the
14 redemption or purchase price of bonds subject to redemption or
15 purchase as provided in the applicable bond proceedings;

16 (B) coverage requirements of a bond indenture for a
17 transportation project;

18 (C) costs of operation and maintenance for a
19 transportation project;

20 (D) cost of repair, expansion, or improvement of a
21 transportation project;

22 (E) funds allocated for feasibility studies; and

23 (F) necessary reserves as determined by the regional

mobility authority.

(19) Transportation project--Means:

(A) a turnpike project;

(B) a system designated under Transportation Code,

§370.034;

(C) a passenger or freight rail facility, including:

(i) tracks;

(ii) a rail line;

(iii) switching, signaling, or other operating
equipment;

(iv) a depot;

(v) a locomotive;

(vi) rolling stock;

(vii) a maintenance facility; and

(viii) other real and personal property associated
with a rail operation;

(D) a roadway with a functional classification greater
than a local road or rural minor collector;

(E) a bridge;

(F) [~~(E)~~] a ferry;

(G) [~~(F)~~] an airport, other than an airport that on
September 1, 2005 was served by one or more air carriers engaged
in scheduled interstate transportation, as those terms were

defined by 14 C.F.R. §1.1 on that date;

(H) [~~(G)~~] a pedestrian or bicycle facility;

(I) [~~(H)~~] an intermodal hub;

(J) [~~(I)~~] an automated conveyor belt for the movement
of freight;

(K) [~~(J)~~] a border crossing inspection station,
including an inspection station located at or near an
international border crossing or a border crossing from another
state of the United States that is not more than 50 miles from
an international border;

(L) [~~(K)~~] an air quality improvement initiative;

(M) [~~(L)~~] a public utility facility;

(N) [~~(M)~~] a transit system; ~~and~~

(O) a parking area, structure, or facility, or a
collection device for parking fees;

(P) [~~(N)~~] if applicable, projects and programs listed
in the most recently approved state implementation plan for the
area covered by the RMA, including an early action compact;

(Q) improvements in a transportation reinvestment zone
designated under Transportation Code, Chapter 222, Subchapter E;
and

(R) port security, transportation, or facility projects
eligible for funding under Transportation Code, §55.002.

(20) Turnpike project--A highway of any number of lanes, with or without grade separations, owned or operated by an RMA under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, or ramp;

(C) an administration, storage, or other building the RMA considers necessary for the operation of a turnpike project;

(D) a property right, easement, or interest the RMA acquires to construct or operate the turnpike project; and

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the RMA considers necessary, useful, or beneficial for the operation of a turnpike project.

SUBCHAPTER D. APPROVAL OF A TRANSPORTATION PROJECT

§26.36. Projects of Another Governmental Entity.

(a) Purpose. Except as for a transportation project described in Transportation Code, §370.033(f)(1) or (2), the department must approve an RMA's acquisition, planning, design, construction, maintenance, repair, or operation of a transportation project on behalf of another governmental entity. Feasibility analysis, including preliminary design, is not subject to the approval requirements of this section. This section prescribes the procedures by which the commission will consider approval.

(b) Request. An RMA seeking commission approval under this section must submit a request to the executive director. The request must include:

(1) an overview of the transportation project for which the request is being made, including a description of the project, the total estimated cost of the project, and a description of the work to be performed by the RMA and by the governmental entity;

(2) a description of the need for the project and the benefits anticipated to result from completion of the project, including any anticipated:

(A) impacts on the economic development potential in

1 the area;

2 (B) reductions in congestion;

3 (C) improvements in efficiency on the region's
4 transportation system;

5 (D) enhancements to safety; and

6 (E) improvements to air quality in the region;

7 (3) a proposed project funding plan that includes amounts
8 proposed for each of the project cost categories, including
9 design, development, financing, construction, maintenance, and
10 operation;

11 (4) department contributions and participation
12 anticipated to be requested for the project;

13 (5) official written approval of the project by the board
14 of the RMA and the governing body of the governmental entity
15 with jurisdiction over the project;

16 (6) a description of and any documentation evidencing
17 local public support for the project and any local public
18 opposition;

19 (7) a preliminary project development and implementation
20 schedule, including an estimated date when the project will be
21 completed;

22 (8) a description of the RMA's experience in developing
23 transportation projects comparable to the project for which the

1 request is being made;

2 (9) if applicable, given the nature of the project,
3 information explaining how the project will be consistent with
4 the Statewide Transportation Plan and, if appropriate, with the
5 metropolitan transportation plan developed by the metropolitan
6 planning organization with jurisdiction over the project;

7 (10) a preliminary identification of any known
8 environmental, social, economic, or cultural resource issues,
9 such as hazardous material sites, impacts on wetlands and other
10 water resources, endangered species, parks, neighborhoods,
11 businesses, historic buildings or bridges, and archeological
12 sites;

13 (11) a binding commitment that the environmental
14 consequences of the proposed project will be fully considered in
15 accordance with, and that the proposed project will comply with,
16 all applicable local, state, and federal environmental laws,
17 regulations, and requirements; and

18 (12) a binding commitment to implement all EPIC.

19 (c) Commission approval.

20 (1) Compliance with applicable requirements. The
21 commission may approve a request submitted under this section if
22 the RMA commits to the department and in the agreement with the
23 governmental entity that the RMA will comply with all applicable

1 federal, state, and, if applicable, department requirements.

2 (2) Considerations. In determining whether to approve a
3 request submitted under this section, the commission will
4 consider:

5 (A) the ability of the RMA to award, manage, and
6 complete the work to be performed by the RMA for the project;

7 (B) the need for the project and whether the project is
8 ready for development;

9 (C) the anticipated benefit of the project to the
10 governmental entity and the region; and

11 (D) evidence of local support in the area in which the
12 project is located.

13 (3) Findings. The commission may approve a request
14 submitted under this section if it finds that:

15 (A) if applicable, given the nature of the project, the
16 project is consistent with the appropriate policies, strategies,
17 and actions of the statewide transportation plan and, if
18 appropriate, with the regional transportation plan developed by
19 the metropolitan planning organization with jurisdiction over
20 the project;

21 (B) the RMA's participation in the project will
22 facilitate the ability of the governmental entity to construct
23 the project and achieve the benefits anticipated to be derived

1 from the project;

2 (C) the project will neither duplicate nor conflict

3 with the operations of the department;

4 (D) the project is supported by the RMA, the

5 governmental entity and metropolitan planning organization with

6 jurisdiction over the project, and each other governmental

7 entity affected by the project; and

8 (E) the project is in the best interest of the region.